

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Complaint No. R4-2008-0041
)	Administrative Civil Liability
City of Malibu's Solstice Creek and Corral Canyon Road Bridge Replacement Project)	Pursuant to California Water Code §13350(a)(2)
26023.5 Pacific Coast Highway)	For Violations of
Malibu, CA)	Order No. 2003-0017-DWQ

THE CITY OF MALIBU IS HEREBY GIVEN NOTICE THAT:

1. The City of Malibu (hereinafter Permittee) is building the Solstice Canyon Creek Bridge Replacement Project (Project), located on Corral Canyon Road at 26023.5 Pacific Coast Highway in Malibu, California. Solstice Canyon Creek flows from north to south under Corral Canyon Road via a box culvert with a reinforced concrete bottom. The Project consists of removal of the existing box culvert under Corral Canyon Road and replacing it with a 28-foot long by 58-foot-wide clear span bridge over Solstice Canyon Creek and of grading about 300 feet of the stream channel. The culvert is located approximately 0.25 miles upstream of the Pacific Ocean.
2. Based on the Regional Board staff inspection of the City of Malibu's Solstice Creek and Corral Canyon Road Bridge Replacement Project (Site) on January 25, 2008, erosion control and drainage practices employed during the construction activities at this Site were inadequate and resulted in illegal discharges to waters of the State for which the Regional Water Quality Control Board (Regional Board) may impose administrative civil liability under section 13350 of the California Water Code (CWC).

BACKGROUND

3. On June 14, 2005, the State Water Resources Control Board issued Order No. 2003-0017-DWQ for Conditional Water Quality Certification (401 Water Quality Certification) to the Department of Fish and Game (F&G) for one hundred and eleven restoration projects funded by F&G grants, including the Project at Solstice Canyon Creek. The purpose of the restoration projects are to improve watershed conditions for anadromous fish.
4. On September 6, 2006, the Permittee made applications to various local, state and federal agencies to construct the Corral Canyon Road Bridge Project. The Permittee proposed to remove the existing box culvert under Corral Canyon Road and replace it with a 28-foot long by 58-foot-wide clear span bridge over Solstice Creek.

August 25, 2008

5. On December 14, 2006, F&G issued Streambed Alteration Agreement Number 1600-2006-0361-R5 to Ms. Shelah Riggs, consultant for the City of Malibu, for the Solstice Creek Project.
6. On May 25, 2007, the United States Army Corps of Engineers determined that the project as described was subject to its jurisdiction under Section 404 of the Clean Water Act due to the temporary impact of approximately 0.14 acres of waters of the United States, including wetlands, as a result of replacing the Corral Canyon Bridge over Solstice Creek in Malibu, California.
7. The City of Malibu received permission from the United States Army Corps of Engineers (Corps) to install a diversion in the channel on May 15, 2007 across the entire width of the channel. The diversion was constructed along the entire 260 foot width of the channel, on both the north side and the south side of the proposed Solstice Canyon Creek Bridge Replacement Project in early February 2008. The City of Malibu controls the water level behind the diversion by pumping water around the construction project and discharging it downstream of the diversion structures.

ALLEGED VIOLATIONS

8. On January 25, 2008, after a rain event, Regional Board staff received complaints from the public regarding discharge of spoil piles from the excavation of bridge footers to the creek. Regional Board staff conducted an inspection of the Site on January 25, 2008 and observed spoil piles located on the stream bank and in the creek bed. The rain event had led to erosion and discharge of significant portions of the spoil piles into waters of the State.
9. During the January 25, 2008 inspection, Regional Board staff also noted that there was active erosion along the unprotected stream banks and slopes throughout the Solstice Creek Bridge Replacement Project site (Site).
10. Improper placement of spoil and fill material in Solstice Canyon Creek resulted in major discharge of sediments into the Solstice Canyon Creek during the January 22, 2008 and January 25, 2008 storm events.
11. Erosion control and drainage practices employed during the construction activities at this Site were inadequate and resulted in discharges to waters of the State. The City failed to implement the requirements prescribed in their 401 Certification permit.
12. On March 10, 2008, Regional Board staff contacted Mr. Granville Bowman, City of Malibu, to inform the City of the violations. Mr. Bowman stated that the City was aware of the spoil piles being stock piled in the creek and that some of the material had washed downstream.
13. On March 11, 2008, Mr. Richard Calvin, City of Malibu, contacted Regional Board staff to inform the Regional Board that the spoil piles had been removed from the creek.
14. The creation of conditions of pollution or nuisance in any waterbody and its subsequent discharge are violations of California Water Code section 13350. The discharges were not a

result of natural phenomenon of an exceptional, inevitable, and irresistible character and could have been prevented or avoided by the exercise of due care or foresight.

SOURCES OF INFORMATION

15. The facts set forth above were obtained from the following sources:
 - a. Regional Board staff inspection on January 25, 2008.
 - b. Regional Board staff inspection report and photographs taken January 25, 2008.
 - c. Regional Board staff inspection on March 6, 2008 and photographs taken that day.
 - d. Regional Board Record of Communication dated March 10, 2008.
 - e. Regional Board Record of Communication dated March 11, 2008.
 - f. Regional Board staff inspection on March 21, 2008.

IMPACTS TO THE WATERS OF THE STATE

16. As set forth in the alleged violations above, the Permittee and/or its contractors, agents, and employees improperly placed spoil piles and fill material in Solstice Canyon Creek, a water of the State, which resulted in major discharge of sediments into Solstice Canyon Creek during the January 22, 2008 and January 25, 2008 storm events.
17. Further, erosion control and drainage practices employed by the Permittee and/or its contractors, agents, and employees during the construction activities at this Site were inadequate and resulted in discharges to Solstice Canyon Creek, a water of the State, and impacted water quality and beneficial uses.

CONCLUSION

18. Based on the Regional Board staff inspection of the City of Malibu's Solstice Creek and Corral Canyon Road Bridge Replacement Project (Site) on January 25, 2008, erosion control and drainage practices employed during the construction activities at this Site were inadequate and resulted in illegal discharges to waters of the State for 45 days between January 25, 2008 to March 10, 2008, for which the Regional Water Quality Control Board (Regional Board) may impose administrative civil liability under section 13350 of the California Water Code.
19. The unauthorized discharge of wastes by the Permittee was not permitted and is in violation of water quality objectives established in the *Water Quality Control Plan for the Los Angeles Region* and applicable State and Federal Water Quality Standards. The Permittee's activities have impacted Solstice Creek.

POTENTIAL CIVIL LIABILITY

20. Section 13350(a)(2) of the CWC states that "(a) Any person who...(2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)."

21. Pursuant to California Water Code section 13350(e), civil liability may be administratively imposed by a Regional Board in accordance with California Water Code section 13323 et seq. in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs or ten dollars (\$10) for each gallon of waste discharged, but not both.

The total maximum civil liability authorized by the California Water Code for violation of the requirements contained in Order No. 2003-0017-DWQ is:

POTENTIAL MAXIMUM PENALTY

Penalty Category	Calculation	Total
<i>For failing to comply with CWC 13376</i>	CWC section 13350(a)(2): 45 days x \$5,000/day	\$225,000
POTENTIAL MAXIMUM ACL		\$225,000

RECOMMENDED CIVIL LIABILITY

22. Pursuant to section 13327 of the California Water Code, the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed: the nature, circumstances, extent, and gravity of the violation(s); susceptibility of the cleanup or abatement of the discharge; the degree of toxicity of the discharge; with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability and economic benefit or savings, if any, resulting from the violation; and other matters as justice may require.

a. Nature, circumstances, extent, and gravity of the violations:

The City's improper management practices during the Solstice Canyon Creek Bridge construction project lead to the pollution and degradation of water quality in Solstice Canyon Creek and consequently the Pacific Ocean. The discharges were not a result of natural phenomenon of an exceptional, inevitable, and irresistible character and could have been prevented or avoided by the exercise of due care or foresight by not putting the spoil piles into the creek bed.

b. Susceptibility of the cleanup or abatement of the discharge:

On March 11, 2008, Regional Board staff contacted the City of Malibu's representatives and requested the removal of the spoil piles. In compliance with the request, the spoil piles were removed. Following the removal of the spoil piles, the City implemented the required BMPs at the site until the end of the project. Therefore, a reduction from the maximum civil liability is warranted.

- c. Degree of toxicity of the discharge:
Impacts of the project include increased turbid waters, total suspended solids and the negative impact on water quality downstream. Therefore, a reduction from the maximum civil liability is not warranted.
 - d. The ability of the Permittee to pay:
The City has not submitted sufficient information for the Regional Board to determine the City's ability to pay the maximum civil liability. It is assumed, however, that the maximum liability of \$225,000 is not in excess of the financial resources available to the Permittee. Therefore, a reduction from the maximum civil liability is not warranted.
 - e. The effect on the Permittee's ability to continue its business:
The City has not submitted sufficient information for the Regional Board to determine the City's ability to continue its business. It is assumed however that as a public entity, maximum liability of \$225,000 will not have an effect on the City's ability to continue its business.
 - f. Any voluntary cleanup efforts undertaken:
In addition to the City's full compliance with the Regional Board request, the City implemented remediation and mitigation measures to rectify the effects the Project had on the stream channel. Therefore, a reduction from the maximum civil liability is warranted.
 - g. Prior history of violations:
The City does not have a history of prior violations of this nature; therefore, a reduction of the maximum civil liability is warranted.
 - h. Degree of culpability:
The discharge alleged in this Complaint was avoidable and resulted from mismanagement and/or lack of supervision of the City's project contractor. The City also failed to oversee or implement the requirements prescribed in their 401 Certification permit. Therefore, a reduction of the maximum civil liability is not warranted.
 - i. Economic benefit or savings:
Economic benefit or savings as a result of the illegal discharge is unknown.
 - j. Other matters as justice may require:
An additional matter to consider includes time spent by the staff of the Regional Board in evaluating the incidents of violation and preparing this complaint and related documents. The Regional Board charges at a rate of \$125 per hour for staff cost recovery. With total staff time at approximately 59 hours, staff costs incurred by the Regional Board are estimated at \$7,375.
23. After consideration of the factors in section 13327 of the California Water Code, the Chief Deputy Executive Officer recommends that administrative civil liability be imposed on the Permittee by the Regional Board in the amount of \$52,375 which includes the following:

- a. An assessment of \$45,000 for the violation of at least 45 days starting from the completion date of the diversion installation from January 25, 2008 through the removal of the spoil piles on March 10, 2008.
- b. Reimbursement of \$7,375 in Regional Board staff costs (59 hours x \$125/hour).

RECOMMENDED CIVIL LIABILITY

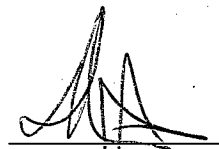
Penalty Category	Calculation	Total
<i>For failing to comply with CWC 13376</i>	CWC section 13350(a)(2): 45 days x \$1,000/day	\$45,000
<i>Reimbursement for Staff Costs</i>	59 hours x \$125/day	\$7,375
TOTAL RECOMMENDED PENALTY		\$52,375

24. If the Permittee elects to pay the recommended civil liability, the administrative civil liability is due and payable and must be received by the Regional Board by the close of business on September 23, 2008.
25. The Permittee may waive the right to a hearing. Should the Permittee choose to waive the right to a hearing, an authorized agent must sign the waiver form attached to this complaint and return the executed waiver form to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013 to be received by the Regional Board by the close of business on September 23, 2008. If the hearing is waived, the following options are available to satisfy the civil liability:
 - a. A check in the amount of \$52,375 (payable to the State Water Resources Control Board Waste Discharge Permit Fund) shall accompany the signed waiver.
26. Unless waived, a hearing before the Regional Board or Regional Board Hearing Panel (Hearing Panel) will be held within 90 days after service of this Complaint pursuant to California Water Code sections 13228.14 and 13323. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2008-0041 and return it to the Regional Board by. If we do not receive the waiver and payment of the penalty by September 23, 2008, the matter will be heard before the Regional Board or Hearing Panel.
27. The Permittee and/or the Permittee's representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. A notice containing the date, time, and location of the hearing will be mailed to the Permittee not less than ten (10) days prior to the hearing date. The Regional Board or a Regional Board Hearing Panel may assess a penalty higher than the recommended civil liability in this Revised Complaint.

28. The Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial liability in a greater amount.
29. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations contained in the California Code of Civil Procedure that refers to "actions" and "special proceedings" apply to judicial proceedings, not administrative proceedings. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
30. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.
31. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.



Deborah J. Smith
Chief Deputy Executive Officer